IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 593 OF 2005

Maruti Tukaram Patil & ors. ... Appellants (Ori.Defendants)

V/s

Dnyanu Aba Dhanave
(since deceased, through his L.Rs.)
Shivram Nivruti Dhanave & ors. ... Respondents

Mr. Rahul S. Kate for the appellants.

CORAM: P.V. KAKADE, J.

DATED: 4TH AUGUST, 2005

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by the Addl. District Judge, Sangli, dated 17.8.2004 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Jr.Divn., Tasgaon dated 21.9.1989 decreeing the plaintiff’s suit for declaration and injunction.

2. I have heard the learned counsel for the appellants. Perused the record.

3. The plaintiff filed the present suit for declaration that the gift deed executed in favour of the defendant No.2 is void and he was the owner of the suit property. Consequential relief for injunction and alternatively for possession was also sought.

Defendants contested the suit on various grounds including that the plaintiff had executed the gift deed and there was no element of fraud or misrepresentation as alleged and on that ground the suit was sought to be dismissed.

4. The learned Trial Judge, after hearing both sides on merits came to the conclusion that the evidence on record was sufficient to show that the execution of the gift deed executed in favour of defendant No.1 was obtained by playing fraud and misrepresentation and, therefore, it was not binding on the plaintiff and, as such, the consequential relief also came to be decreed.

The appeal was carried to the District Court at Sangli. The learned Addl. District Judge, Sangli, heard the appeal on merits and came to the conclusion that the findings recorded by the Court below were legal and

proper and hence dismissed the appeal. Hence the present appeal.

5. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. All the issues are seen to be issues of fact and are adjudicated in proper manner. Both the Courts below appear to have appreciated the entire evidence in proper perspective and, therefore, there is absolutely no reason why this Court should interfere in the findings recorded by both the Courts below.

6. The learned counsel for the appellants submitted that the suit was barred by law of limitation as it was not filed within three years from the date when the cause of action first accrued. However, the evidence on record is sufficient to show that the plaintiff came to know for the first time that the gift deed was executed when defendants 1 and 2 intended to sale the suit land. Though there were mutation entries of defendant No.1 in the suit property being Mutation Entry No.95, it was mentioned that notice was issued and entry was served. However, there is absolutely no evidence to show that the plaintiff was served with any notice in respect of said mutation entry. In view of this aspect, it cannot

be said that the plaintiff had earlier knowledge of the fact that document he had executed was a gift deed of his entire property. Be that as it may, it is seen from the record that, both the Courts below have properly dealt with the said aspect on the basis of available evidence and, therefore, it would brook no interference.

7. In the result, the appeal has no merits and stands dismissed with no order as to costs.

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